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ABSTRACT

In 1996, only 30% of poor children who lived apart from their fathers received financial support. That year, welfare reform addressed this hard fact, stepping up efforts to collect child support. However, increased child support alone will not be enough. Further support, economic incentives, and revised child support policies are needed to enable low-income noncustodial fathers to take financial responsibility for their children. In addition to the opportunities implicit in the 1996 welfare reform law and the 1997 Balanced Budget Act, three other congressional initiatives taken together could give low-income noncustodial fathers a better shot at employment and financial responsibility for their children. One way is to establish a funding stream to pay for employment-related services to low-income noncustodial fathers. Another is to create incentives to pay child support, perhaps through an extension of the Earned Income Tax Credit to low-income noncustodial fathers who pay child support. A third approach is to revamp child support enforcement policies so that child support orders do not outstrip fathers' ability to pay. (SLD)

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STRENGTHENING FAMILIES

OBLIGATING DADS: HELPING LOW-INCOME NONCUSTODIAL FATHERS DO MORE FOR THEIR CHILDREN

Elaine Sorensen

Too few poor children who live apart from their fathers can count on their financial support. In 1996, only 30 percent of poor children who lived apart from their dads received child support. That year, welfare reform addressed this hard fact, stepping up efforts to collect child support. But increased child support alone will not be enough; further support, economic incentives, and revised child support policies are needed to enable low-income noncustodial fathers to take financial responsibility for their children.

Profile of Noncustodial Fathers

In 1990, there were 9.5 million noncustodial fathers with 18 million children potentially eligible for child support. Only 46 percent of these fathers reported that they paid child support, totaling $18.2 billion that year (dollar figures are adjusted to reflect 1998 prices). They would have paid another $35 billion in child support if all of them had paid child support according to the Wisconsin child support guidelines. Nonetheless, 23 percent of these fathers had incomes below the gross income standard for food stamp eligibility and did not pay child support that year. (In other words, their family income fell below 130 percent of the poverty level for two consecutive months in 1990.) These fathers tend to be young and disproportionately African-American, with limited education (nearly half had not completed high school). Although 90 percent of these fathers worked or looked for work in 1990, only 18 percent of them worked full-time, year-round that year. Their annual personal income averaged only $8,956 (in 1998 dollars). Despite their low incomes, few of these fathers received any sort of public assistance in 1990, and even fewer received means-tested employment-related services.

In addition to the opportunities implicit in the 1996 welfare reform law and the 1997 Balanced Budget Act, three other congressional initiatives taken together could give low-income noncustodial fathers a better shot at employment and financial responsibility for their children.

Although national surveys cannot show with certainty that low-income noncustodial fathers are associated with poor custodial mothers, the data strongly suggest that this is the case. About 2.2 million custodial mothers were poor and did not receive child support in 1990, which is about the same number of noncustodial fathers who were low-income and did not pay child support that year. Furthermore, the mothers' demographic characteristics are very similar to those of low-income noncustodial fathers. They too are young and disproportionately African-American, with limited education.

Negative Aspects of the Current System

The current child support system provides little, if any, incentive for welfare families to participate in the formal child support system, and it has many punitive measures that unduly penalize low-income noncustodial fathers.

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• ***Children on Welfare Do Not Benefit from Child Support Paid on Their Behalf***

Typically, when noncustodial parents make child support payments on behalf of children on welfare, the entire amount goes to the government to offset the cost of providing welfare. Thus, noncustodial parents' financial contributions do not directly benefit their children. Not surprisingly, custodial and noncustodial parents attempt to avoid the formal child support system as much as possible.

In 1984, the federal government decided to create a financial connection between noncustodial parents and their children on welfare by requiring states to pass through up to $50 of child support each month to the welfare family. The costs of this provision were split between the federal and state governments. Although little research was ever conducted on whether the $50 pass-through was sufficient incentive for welfare families to use the formal child support system, many policymakers believed that it was not. It was also generally believed that it encouraged families to remain on welfare, since they could receive child support ***and*** still get public aid.

In 1996, Congress rescinded the federally mandated $50 pass-through; states are no longer required to pass through to welfare families any child support paid on their behalf. They now have the option to pass through some, none, or all of the child support paid on behalf of a family—but at the state's expense. Thus, the new law means that there is no financial link between noncustodial parents and their children on welfare unless the state is willing to pay for it.

• ***Some Punitive Measures Unduly Penalize Low-Income Fathers***

Since 1988, child support awards must be set according to state child support guidelines, which tend to be regressive, requiring low-income fathers to pay a larger share of their income toward child support than do higher-income fathers. This regressivity is due, in part, to the fact that child support guidelines reflect the needs of children, which do not vary as much as income. Adding to this regressivity is the practice of issuing default and retroactive orders that outstrip a father's ability to pay child support. These types of orders contribute to the large arrearages that low-income noncustodial fathers often face.

Child support awards are supposed to reflect the earnings capacity of the noncustodial parent, but if the father does not show up in court to establish his earnings capacity, many states allow courts to assume, at a minimum, that the father can work a full-time minimum-wage job and to impute his income at this rate. A child support order, called a default order, is set based on this imputed income. In 1998, a full-time minimum-wage job would have paid $10,714 a year. Low-income noncustodial fathers would have earned $8,956 that year if their earnings had kept pace with inflation between 1990 and 1998, or 16 percent less than a full-time, year-round minimum-wage job. A father can always come forward with accurate information about his income and ask that his award be lowered, but this takes time and money. Furthermore, any amount accrued cannot be forgiven by a court, even if the order does not reflect his ability to pay. Default orders are necessary because some dads deliberately miss their court date, but default orders that overstate fathers' ability to pay unduly penalize them and do not help their children.

Many states set child support awards for unmarried parents back to the date of the birth of the child, even if no action was taken to establish paternity until much later. If states choose to backdate child support orders, federal law requires them to set awards according to the states' child support guidelines. But if the father does not provide information regarding his earnings capacity, courts will impute an income for him back to the date of the child's birth and set the child support award accordingly. Furthermore, courts rarely, if ever, consider whether the father lived with the child during this period or informally contributed to the child's well-being when setting the retroactive award.

Since 1986, Congress has prohibited courts from forgiving or reducing past-due child support in an effort to protect custodial families. However, this law has resulted in noncustodial parents being expected to pay child support orders in full, regardless of whether the order is fair or that amount is actually owed to the custodial family. In FY 1997, the federal Office of Child Support Enforcement reported that $43 billion was owed in past-due support, of which less than 8 percent had been collected. Most of this debt is owed to the government because it was accumulated while the children were on welfare. Some states actually establish a "state debt" that noncustodial parents must pay that is equal to the amount of public assistance provided to the custodial family, even though this practice appears to violate federal law.

The cumulative effect of these policies is that many poor noncustodial fathers owe large sums of money to the government for providing welfare to their children. In other words, we expect poor noncustodial fathers to pay, at least in part, the cost of providing welfare to their children. Yet, we do not expect poor custodial parents who actually receive welfare along with their children to pay ***any*** of their welfare costs. A safety net is extended to poor custodial parents and their children, the cost of

which they are not expected to bear. Instead, it is shifted, at least in part, to poor noncustodial parents. No wonder many low-income noncustodial fathers feel that the child support system treats them unfairly.

Welfare Reform

In 1996, Congress fundamentally changed government's support system for needy families. The most sweeping changes replaced entitlements for families with dependent children with block grants to states and set time limits on how long a family can draw welfare. These changes make private sources of income, such as child support, even more important to low-income families.

The new law (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, or PRWORA) also revamped the child support system. It gave enforcement agencies more power to establish paternity and collect support, at the same time sanctioning welfare mothers who refuse to help in this process. It called for the creation of new national databases on court orders for child support and on new hires—boons to administrative efficiency in finding neglectful fathers. It clarified some other interstate jurisdictional issues that had made tracking "deadbeat" dads hard and gave states the authority to revoke offenders' professional, recreational, and drivers' licenses.

These and other changes ushered in two years ago are expected to extract more child support from noncustodial fathers, but the new law may have unintended consequences. Punitive measures have increased without addressing some of the underlying problems discussed above that are unfair toward low-income fathers. The federally mandated policy of passing $50 of child support paid through to welfare families was eliminated, but no other incentive was added to encourage child support payments to children on welfare. Adding these changes to the current system may end up driving poor fathers farther away from the formal child support system and their children.

Current Opportunities

Several provisions of the 1996 welfare reform law provide opportunities to increase the earnings of low-income noncustodial fathers and their involvement with their children. The new law requires states to have procedures in place so that courts can order unemployed noncustodial parents with children on welfare into work activities, and it allows states to use their welfare block grants to pay for such services. It also established access and visitation block grants to states to give noncustodial fathers easier access to their children. The Balanced Budget Act of 1997 provided additional funding for employment-related services for noncustodial parents. The Department of Health and Human Services has also issued federal waivers and demonstration grants to states that request them so that the states may use child support enforcement dollars to provide services to low-income noncustodial fathers.

- ***Work Activities for Delinquent Child Supporters***

In 1996, as part of welfare reform, Congress required all states to have procedures in place that allow courts to order noncustodial parents into work activities available to welfare recipients if they are behind in their child support, have children receiving welfare, and claim to be unemployed. Prior to 1996, courts in nearly every state could order delinquent parents to seek work if they reported unemployment as the reason for not paying child support, but the courts had no way to verify compliance with this order and no authority to order more comprehensive employment services for noncustodial parents. This provision was expected to address this issue, but it was not clear how states were expected to pay for this mandate.

- ***Using TANF Dollars for Noncustodial Fathers***

The lack of funding for the aforementioned mandate was remedied in the preamble to the proposed federal regulations for the new welfare program (i.e., Temporary Assistance for Needy Families, or TANF). It allows states to use their welfare block grant funds or their maintenance-of-effort (MOE) money to provide employment-related services to noncustodial parents who have children on welfare. Although TANF was designed to assist families with children, Congress did not delineate a specific definition of family for the new welfare program, leaving it up to states to define what a "family" is. Thus, states are free to include noncustodial parents of TANF children as members of the TANF family in order to provide them with employment-related services.

- ***Visitation and Access Grants***

Research clearly shows that noncustodial parents are more likely to pay child support if they spend time with their children. Nonetheless, the federal government has been reluctant to regulate visitation and access because that has historically been a state responsibility. Under welfare reform, Congress authorized $10 million in access and visitation grants to states so that they could augment or introduce programs that make it easier for noncustodial parents to see their children. Every state

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applied for and received these grants. Most states are using their court systems to deliver these services, but some are using community-based organizations in an effort to better serve unwed families, who often are not involved with the courts.

- ***Welfare-to-Work Grants***

Under the Balanced Budget Act of 1997, Congress authorized the Department of Labor to allocate $3 billion in welfare-to-work grants to states and local communities to create additional job opportunities for the hardest-to-employ welfare recipients. Custodial parents are expected to benefit most from these funds, but the grants can also serve noncustodial parents if they meet certain eligibility criteria. Many states have said that they plan to serve eligible noncustodial parents with their funds, and numerous competitive grants funded by welfare-to-work dollars are serving low-income noncustodial fathers.

- ***Federal Waivers and Demonstration Grants***

The Administration for Children and Families (ACF) of the Department of Health and Human Services has begun issuing waivers and demonstration grants to states so that they may use child support enforcement dollars to pay for services that enable low-income noncustodial parents to be financially and emotionally connected to their children. In 1997, eight states received demonstration grants or waivers from ACF to test comprehensive approaches to encourage responsible fatherhood among low-income noncustodial fathers. Another 10 states, working with the National Center for Strategic Nonprofit Planning and Community Leadership, have recently submitted waiver applications to ACF to provide enabling services to low-income fathers as part of the Partners for Fragile Families Demonstration.

Finishing the Job

In addition to the opportunities implicit in the 1996 welfare reform law and the 1997 Balanced Budget Act, three other congressional initiatives taken together could give low-income noncustodial fathers a better shot at employment and financial responsibility for their children.

- ***Establish a Funding Stream to Pay for Employment-Related Services to Low-Income Noncustodial Fathers***

Low-income noncustodial fathers need employment-related services to meet their financial obligation to their children. Just as poor custodial parents need work-enabling services to become self-sufficient, so do noncustodial parents, many of whom face the same employment barriers as custodial parents. As mentioned above, nearly one-half of low-income noncustodial fathers who do not pay child support have not completed high school, and fewer than one in five have full-time, year-round work. Their personal income is barely enough to support themselves, making it difficult to support children living elsewhere.

Recent research from a national demonstration project, Parents' Fair Share, shows that it is difficult to increase the earnings and child support payments of low-income noncustodial fathers who do not pay child support. The Parents' Fair Share Demonstration, which ran during the mid-1990s, provided employment-related services to unemployed noncustodial fathers. The most commonly offered service was job search activities, which did not appear to help these fathers. Apparently they were able to find intermittent employment without this program; what they needed were year-round jobs at higher wages. Future programs will need to offer a different mix of employment services if they hope to increase these fathers' earnings.

At this point there is no funding stream dedicated to providing employment-related services to low-income noncustodial fathers. Although states *may* use their TANF or welfare-to-work dollars on this population, there is no directive to do so. Many states currently have excess funding in these programs and are utilizing the flexibility in these programs to provide services to low-income fathers. But states are not required to serve this population, and once welfare dollars dry up, services to noncustodial parents will most likely be eliminated.

One way to finance these services is to establish a new block grant to states. The Fathers Count Act of 1998, a bill introduced by Representative Clay Shaw (R-FL) in the 104th Congress, did just that, but it died before coming to a vote. Another approach is to require that part of the funding of an existing block grant be set aside to provide services to low-income fathers. President Clinton has taken this approach. He proposed $1 billion to extend the welfare-to-work program through FY 2000 and would require all states to use 20 percent of their formula funding on low-income noncustodial fathers. A third approach would require states to use part of their child support enforcement funding to provide these services.

- ***Create Incentives to Pay Child Support***

As explained above, noncustodial fathers with children on welfare have virtually no incentive to pay child support. Although the $50 pass-through provides a small incentive to pay child support, a bolder approach (currently being implemented by Wisconsin) would

allow welfare families to keep *all* of the child support paid on their behalf and disregard that amount in determining welfare benefits. Senator Herb Kohl (D-WI) introduced legislation in the 104th Congress that would require all states to follow Wisconsin's lead and plans to introduce similar legislation this year. This approach would substantially increase the amount of child support dollars going to welfare children. Although one could argue that this policy may encourage families to remain on welfare, since they can collect both welfare ***and*** child support, the five-year time limit imposed on welfare should offset this incentive.

While our current tax system provides substantial tax relief to parents who reside with their children, it offers no similar treatment to noncustodial fathers who pay their child support. The Earned Income Tax Credit is a case in point. In 1996, low-income working custodial parents could qualify for up to $3,556 in tax credits, but low-income working noncustodial parents who paid their child support could qualify for at most $323 in tax credits that year. An alternative approach would be to extend the Earned Income Tax Credit to low-income noncustodial fathers who pay their child support.

- ***Revamp Child Support Enforcement Policies***

Lawmakers need to reassess whether current child support enforcement policies treat low-income noncustodial fathers fairly. Current state guidelines, coupled with practices regarding default and retroactive orders, make child support orders quite regressive, requiring low-income noncustodial fathers to pay a considerably higher percentage of their income in child support than do higher-income fathers.

Low-income fathers tend to accumulate excessive child support debt because their child support orders outstrip their ability to pay child support. Much of this debt is owed to state governments because the fathers' children were on welfare while it accrued. One method of reducing the large child support debt owed to state governments is to establish an amnesty program that forgives this debt as long as noncustodial fathers keep up with their current child support obligations.

As more children leave the welfare rolls, support from noncustodial fathers will become more meaningful to them. The incentive for fathers to pay child support will also increase once they realize that a higher share of their contributions is reaching their children. Nonetheless, this enhanced incentive to pay child support will not yield greater use of the formal child support system unless adjustments are made to draw in more low-income noncustodial fathers.

Capitalizing on These Opportunities

It is time to recognize that noncustodial fathers are a diverse population of individuals, some of whom can't afford to pay much child support. For this group, insisting upon high levels of child support without providing economic incentives and employment-related services won't help them or their children. What is needed are reforms that improve the capacity and motivation of low-income noncustodial fathers to do right by their children.

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OBLIGATING DADS: HELPING LOW-INCOME NONCUSTODIAL FATHERS DO MORE FOR THEIR CHILDREN

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This series, funded by the Charles Stewart Mott Foundation, considers policies that help low-income parents provide the emotional and financial support their children need.

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